



## **Resumption of In-Person Hearings**

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** Beginning on January 3, 2022, the Federal Mine Safety and Health Review Commission (the “Commission”) is resuming in-person hearings in the manner described below until June 30, 2022, or until such earlier date determined by the Commission’s Office of the Chief Administrative Law Judge (“OCALJ”) and published in a notice appearing in the Federal Register and posted on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)).

**DATES:** Applicable: January 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935.

**SUPPLEMENTARY INFORMATION:** Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all attorneys, representatives, parties, and witnesses who may appear before them, during the Coronavirus 2019 (COVID-19) pandemic, while continuing the agency’s mission. On December 3, 2021, Commission Chief Administrative Law Judge Glynn F. Voisin issued an order which is posted on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)). The contents of the order are set forth in this notice.

As of January 3, 2022, the Commission will resume in-person hearings, but for the duration of the Chief Judge’s December 3 order, all hearings are subject to the following terms set forth in the order.

Commission Judges may, at their sole discretion, hold remote hearings (e.g. via Zoom) and require specific procedures to provide for safety. Commission Judges shall

exercise this discretion within uniform parameters as set forth herein. Each Judge shall determine (1) when to use remote hearings in lieu of in-person hearings and (2) specific safety procedures to be used at an in-person hearing.

In determining use of a remote hearing, Judges will consider safety factors on a case-by-case basis. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video participation. Judges will ensure all parties appearing pro se who are required to participate in a remote hearing have access to equipment, an Internet connection, and other appropriate technology. Prior to conducting an in-person hearing, Judges will schedule a conference call with the attorneys and representatives of each of the parties to discuss, among other things, safety considerations for the in-person hearing. Judges may discuss the agency's travel guidelines, protocols, and safety measures. Persons who are not comfortable with travel or appearing in person, may request to attend the hearing via remote access (e.g. via Zoom).

The Judge will set a hearing location after considering the safety and health rules currently in place by the state and local public health entities. In choosing a courtroom, the Judge will take into consideration the rules and requirements of the court or hearing facility, as well as all applicable federal, state, and local regulations and guidelines. If the hearing is to be a hybrid hearing, the Judge will also consider the availability of Internet and technology needs in the courtroom.

During the prehearing conference, the Judge will inform the parties of the federal, state, local and courtroom requirements and seek a commitment to adhere to those requirements. The requirements apply to all attorneys, assistants, parties, and witnesses. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and social distancing, must be implemented. No person may enter the courtroom, or the witness room without the permission of the Judge.

Hearing participants are subject to the following vaccination requirements for attendance at in-person hearings:

- **FMSHRC employees:**

- FMSHRC employees must be fully vaccinated by November 22, 2021, unless a legally required exemption applies. All FMSHRC employees must adhere to CDC guidance on social distancing and mask wearing.

- **Visitors:**

- Visitors are federal employees from other agencies such as the Department of Labor, spectators, and press. Visitors must attest to their vaccination status using the Certificate of Vaccination form at <https://www.saferfederalworkforce.gov/downloads/CertificationVaccinationPRAv7.pdf>. The Judge shall not collect documentation to verify their attestation. Visitors who are not fully vaccinated shall show proof of a negative COVID-19 test result from a Food and Drug Administration authorized test taken within three days prior to entry to the in-person hearing. The Judge shall not collect documentation to verify COVID-19 test results. All visitors must adhere to CDC guidance on social distancing and mask wearing.

- **Contractors:**

- Court reporters are contractors and must be fully vaccinated by January 18, 2022, unless a legally required exemption applies. All court reporters must adhere to CDC guidance on social distancing and mask wearing.

- **Non-government Parties, Representatives and Witnesses:**

- Persons who are not federal government employees and who are parties, representatives of parties, or witnesses do not need to attest to their vaccination status to attend an in-person FMSHRC hearing and Judges shall not inquire into their vaccination status. All such persons must adhere to CDC guidance on social distancing and mask wearing.

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive.

These procedures shall be in place until June 30, 2022 unless extended or modified by order.

(Authority: 30 U.S.C. 823; 29 CFR part 2700.)

Dated: December 3, 2021

**Sarah L. Stewart,**

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